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December 1, 2006

BY FACSIMILE AND FIRST CLASS MAIL

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2006 DEC - 1 P 4: 40

Re: MUR 5849 (In re Bank of America Corporation)

Dear Mr. Norton:

We write on behalf of our client, Bank of America Corporation (the "Bank"), in response to the Commission's October 17, 2006 letter finding reason to believe that the Bank violated the Federal Election Campaign Act by reimbursing \$10,030 in federal campaign contributions over a five-year period. _____

The reimbursed contributions identified in the staff's Factual and Legal Analysis ("F&LA") were all detected, thoroughly investigated, and voluntarily disclosed to the Commission by the Bank itself. The Bank aggressively implemented corrective measures and instituted new internal controls. Moreover, the contributions in question were reimbursed without the knowledge of senior Bank managers. In fact, it appears that Kathleen Cannon, the individual who authorized most of the contributions, actively sought to conceal her activities from Bank management.

The facts are described in great detail in the Bank's voluminous voluntary submission dated February 28, 2006. That submission was based on an internal investigation that involved

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interviews of some 50 Bank employees across the country and review of many thousands of pages of documents, including extensive electronic discovery.

The discovery by the Bank that Cannon, manager of the Bank's Student Banking Division, a relatively small division located in Los Angeles, had authorized reimbursement of campaign contributions, is a success story for the Bank's compliance program and internal auditing function. Bank employees annually undergo training concerning the Bank's Code of Ethics, which, among other things, prohibits Bank funds from being used to make political contributions. In 2005, however, employees were required for the first time to undergo such training through an interactive online system. It was apparently this enhanced, online training that drew the attention of Student Banking employees to the reimbursement issue, as well as to unrelated issues concerning Code of Ethics compliance by Cannon.

After an employee called the Bank's ethics "helpline" to report concerns about Cannon unrelated to reimbursements, an internal auditor reviewed Cannon's email and spotted evidence that she had solicited and authorized reimbursement of campaign contributions. The Bank engaged outside counsel to conduct an investigation, and based on facts developed during that investigation, terminated Ms. Cannon and four of her subordinates.

The Bank immediately took a range of prophylactic actions to improve controls and to reduce the chance that any other employee among the Bank's approximately 200,000 employees would seek, authorize, or receive reimbursement for a political contribution. It revised its Code of Ethics to make more explicit the specific prohibition on reimbursement of contributions. It also implemented a computerized auditing program to periodically scan the Commission's disclosure database and compare it with the Bank's employee expense reimbursement database in order to spot reimbursed contributions. This is a powerful FEC compliance tool, and may be

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among the first of its kind in corporate America.¹ The Bank in fact used this customized software tool to aid the internal investigation of the Cannon matter. It was this tool that identified the handful of reimbursed contributions originating in the Bank's Texas-based Wholesale Lending Division and helped confirm that the problem was not more widespread. Finally, the Bank notified the candidate committees that had received reimbursed contributions and requested that they refund the money in question to the U.S. Treasury.

The reimbursed contributions at issue in this Matter Under Review were not directed by, or even known to, senior Bank management. Rather, the bulk of the contributions were solicited and then approved for reimbursement by Cannon. Had Cannon submitted any of her own contributions for reimbursement, this would have alerted Bank management to her unauthorized practices because her expense reports were subject to review and approval by her supervisor at the Bank's Charlotte, North Carolina headquarters. It appears that she was careful not to seek reimbursement herself, thus cloaking her activities from scrutiny. Although she communicated with the Bank's government relations staff on a number of occasions, and requested contributions to Rep. Buck McKeon from the Bank's separate segregated fund, she admitted that she never informed the government relations staff that she was authorizing reimbursement of personal contributions by her staff.

The staff's Factual and Legal Analysis states that "the Bank's corporate officers and managers routinely approved the reimbursement of certain categories of expenses incurred by their subordinates." F&LA at 13. There is no evidence that there was any general practice among Bank officers and managers of routinely approving reimbursement of campaign contributions, however. To the contrary, the reimbursed contributions were isolated within the

¹ The Bank is currently working on reconfiguring the system to make it compatible with the Bank's new expense reimbursement software.

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Student Banking Division and, to a much lesser extent, the Wholesale Lending Division, both of which are quite small and remote entities within the Bank's sprawling global operation.²

The staff seeks to impute liability to the Bank for Cannon's actions, on the ground that she was acting within the scope of her employment when she authorized the reimbursements.³ Even if the Commission could establish a legal basis for imputing liability for Cannon's actions to the Bank, however, it should exercise its prosecutorial discretion not to do so. First, the Bank itself uncovered, investigated, and voluntarily disclosed the reimbursed contributions. It should be the Commission's policy to take account of, and credit, the respondent's voluntary investigation and public disclosure of compliance issues.

Second, the Bank took prompt and appropriate corrective steps. Third, Cannon acted on her own, concealing her activities from senior management. This is not a case in which reimbursement of contributions reflected a concerted scheme by corporate management as part of the corporation's government relations strategy. Finally, the dollar amounts at issue in this case, both in the aggregate and on an annual basis over the five years during which reimbursements were made, are quite small.

² In the case of Wholesale Lending, the total sum involved was \$1,830.

³ The F&LA asserts that Ms. Cannon "apparently stated that she was not a McKeon supporter." F&LA at 3. If this statement is based on any information provided by the Bank, it misconstrues the Bank's submission. Ms. Cannon did not disclaim supporting Rep. McKeon. Moreover, she stated that she lives in Rep. McKeon's district. While she did claim to be acting for the benefit of the Bank, that claim is belied by the fact that she sought to conceal her activities from the Bank.

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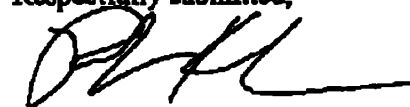
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Penalizing the Bank in these circumstances would not serve the interests of justice and would not encourage others to mirror the sort of vigorous internal investigation and disclosure that the Bank demonstrated here.

Respectfully submitted,



Robert K. Kelner

cc: Maryanne Abely, Esq.

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